IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2300 of 2005
with
CIVIL APPLICATION NO. 7158 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FRANK SOLOMAN LUKE - Appellant(s)
Versus
KALPNA FRANK LUKE - Defendant(s)

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Appearance :

MR IM PANDYA for Petitioner No(s).: 1.
None for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date : 11/08/2005

ORAL JUDGMENT

1. Appeal is admitted. Learned Advocate, Mr. Manish Patel, waives service of notice on behalf of the respondent.

2. In the peculiar facts and circumstances of the case, the appeal is taken up for final hearing.

3. This appeal arises out of a judgment and decree passed by learned Second Joint District Judge, Vadodara, in Regular Civil Suit No.10 of 2004, preferred by the appellant against the respondent, praying for divorce under clauses (7) and (9) of Section 10 of the Indian Divorce Act. Before the Trial Court, the defendant did not appear pursuant to service of summons. The appellant led evidence. However, the Trial Court came to a conclusion that the plaintiff-appellant failed to prove that the defendant-respondent intentionally and wilfully deserted him and that the marriage has not been consummated for a continuous period of two years immediately preceding the filing of the suit and, therefore, dismissed the suit. For reaching to this conclusion, the Trial Court observed that, simple production of certificate of marriage is not a sufficient proof of solemnization of marriage between the parties and, as such, there is no substantial evidence for reaching to the conclusion that the marriage between the parties was solemnized on 6th July, 1992, as per Christian religious rites. The Trial Court refused to rely on the

photographs produced by the appellant-plaintiff to support his case of solemnization of marriage. The Court also did not accept the xerox copy of E-mail produced at Exh.12. The Court observed that there is no evidence to show that the parties have ever lived together under the same roof for a considerable time and, therefore, ultimately, concluded that there is no, prima facie, evidence to show that the defendant has willingly and intentionally deserted the plaintiff. The Court observed that only because the trial has gone ex-parte against the defendant, it need not result into a decree in absence of evidence from the plaintiff's side.

4. Learned Advocate, Mr. Pandya, appearing for the appellant submitted that the plaintiff has led sufficient evidence before the Trial Court. The defendant chose neither to contest the suit nor to challenge the evidence led by the plaintiff-appellant. However, the Trial Court has proceeded on a premise that the marriage certificate is not sufficient evidence of marriage and has overlooked the fact that the deposition of the plaintiff-appellant has remained unchallenged. He, therefore, submitted that the appeal may be allowed.

5. On the other hand, learned Advocate, Mr. Patel, submitted that his client had sworn an affidavit and sent the same directly to the Registrar General of this Court, xerox copy of which is given to him, which he places on record of this Court and is taken on record. Mr. Patel states that, apart from

the affidavit, he has been instructed that the respondent does not want to contest this appeal and has no objection, if a decree of divorce is passed in favour of the appellant, as the matrimonial life has come to an end.

6. On perusal of of the affidavit, it is clear that, according to the respondent, her matrimonial life has come an end and she does not want to contest this appeal. She has no objection, if a decree of divorce is passed in favour of her husband, the appellant herein.

7. In light of what has emerged, as narrated above, it is clear that the relationship of husband and wife cannot be said to be under challenge when the respondent says that she has no objection, if a decree of divorce is passed in favour of her husband, i.e. Frank Solomon Luke, the appellant. It is also clear that the respondent does not object to grant of divorce. There is no reason to disbelieve the say of the appellant before the Trial Court in his deposition, particularly, when the respondent did not challenge the same before the Trial Court and has indicated her willingness to dissolve the marriage. It appears that the marriage was solemnized on 6th July, 1992, at Poona, as per Christian religious rites. It also appears that the spouses lived together lastly at Baroda till 1996 and, thereafter, she deserted the appellant. The suit for divorce was filed in 2004. There is no challenge to the fact that, after 1996, the parties have not lived together. Under these circumstances, the appellant would be entitled to a decree of divorce. The appeal deserves to be

allowed and is allowed. The judgment and order of the Lower Court in Regular Civil Suit No.10 of 2004 is set aside. The marriage between the appellant and the respondent stands dissolved. No costs.

8. In view of the above order in the Appeal, no order on C.A. No.7158 of 2005.

[A. L. DAVE, J.]

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